

**FILED**

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PATRICK E. DUFFY, CLERK

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

KELLY ALLEN FRANK,	)	CV 08-77-H-DWM-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
LARRY PASHA, JIM WILLIS, GAYLE	)	
LAMBERT, MIKE FERRITER, and MIKE	)	
MAHONEY,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Frank has filed a Second Amended Complaint under 42 U.S.C. § 1983 alleging that the Defendants acted with deliberate indifference toward his health and safety by exposing him to toxic chemicals while he worked on the prison ranch.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Complaint as required by 28 U.S.C. § 1915(e)(2). Under that statute, the court engages in a preliminary screening to assess the merits of the claims and identify cognizable claims, or dismiss the complaint or any portion thereof if the complaint is frivolous, malicious, or fails to state a claim upon which relief can be granted.

Judge Strong issued Findings and Recommendations in which he recommends dismissal of the claims against Defendants Ferriter and Mahoney on the grounds that those Defendants were not involved until after the alleged injuries occurred, and thus they could not have acted differently to prevent Plaintiff's alleged injuries.

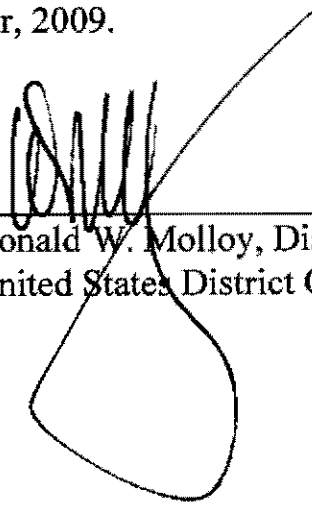
Plaintiff Frank did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

I can find no clear error with Judge Strong's Findings and Recommendations (Doc. No. 12) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the claims against

Defendants Ferriter and Mahoney are DISMISSED WITH PREJUDICE for failure to state a claim.

DATED this 30<sup>th</sup> day of December, 2009.



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Donald W. Molloy, District Judge  
United States District Court